

**SMALL BUSINESS &
ENTREPRENEURSHIP COUNCIL**
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November 30, 2004

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Local Competition Rules, WC Docket No. 04-313, CC Docket No. 01-338*

Dear Chairman Powell:

The Small Business and Entrepreneurship Council (SBE Council)¹ is writing to express our growing apprehension that the FCC may be poised to retreat from the Commission's long-held commitment to facilities-based local competition. We are especially concerned that the Commission will grant further concessions to the Bell monopolies, at the expense of small business telecommunications providers and small business telecommunications consumers. As Vice President Dick Cheney noted during the campaign debates this fall, and as documented by the Small Business Administration, 7 out of 10 new jobs in this country are created by small businesses. Our concern is that by adopting pro-Bell, anti-small business policies, the FCC will only exacerbate the job destruction in the telecommunications sector that the prospect of these policies has augured.²

The Commission's actions in the above-referenced docket will have profound implications for all of the SBE Council's constituent base: those who provide the capital to fund small businesses and entrepreneurs, the small businesses and entrepreneurs that have started businesses in reliance of the Telecommunications Act of 1996, and, finally, the overwhelming majority of our membership that benefits directly from the advanced services, enhanced customer support, and lower prices that these new entrants have brought to the telecommunications market over the last 8 years.

Small businesses and entrepreneurs, like all businesses, depend on capital investment for their lifeblood. Unlike larger firms, however, these companies do not have access to the public debt and equity markets, but rather, are critically dependent on investment from a relatively small community of private equity investors that are willing

¹ The SBE Council is a non-partisan small business advocacy group headquartered in Washington, D.C. The SBE Council represents over 70,000 small business owners nationwide.

² According to *BusinessWeek*, the telecommunications industry has lost 41,000 jobs this year, through September alone. See, "Where Are the Jobs?" [table], *BusinessWeek*, October 25, 2004, p. 40.

to risk capital on America's future. It is, therefore, especially troubling to the SBE Council that the uncertainty over the Commission's policies, created by the FCC's decision not to appeal the *USTA II* decision, has given rise to an outcry from the private equity community that funds a significant part of America's economic growth.³ These investors have expressed a very reasonable concern that the government may be eliminating, midway through an investment cycle, the fundamental basis for their commitment of billions of dollars in investment capital. More troubling still, is the Commission's apparent unwillingness to assuage these concerns. Instead, the FCC seems to be relatively indifferent to the fact that by eliminating access to certain transmission elements, *e.g.*, dark fiber loops and transport, and so-called "high capacity" lit transport services, the FCC may be jeopardizing potentially billions of dollars of investment in new competitive enterprises.

As you have previously recognized, many of these new, predominately facilities-based, competitive carriers are providing amazing benefits to the economy. These benefits include not only newer innovative services, which in turn "force the incumbent to innovate to replace lost wholesale revenues,"⁴ but also benefits like providing "greater network redundancies for security purposes and national emergencies."⁵ Indeed, I wish to draw your attention to one such example—that of NEON Communications, as described in the September 24, 2001 edition of *Telephony*:

"NEON Communications, an upstart Northeast fiber carrier, has had a busy two weeks following the terrorist attacks of Sept. 11. Its technicians have set up an OC-12 at 60 Hudson St. to bring dial-tone service to New York's City Hall and are field testing a wireless optics device to connect a New York health services building to its POP. A clear case of the recent terrorist disaster boosting sales in the beleaguered telecom sector? Not quite.

Admirably, [NEON](#) did the work pro bono, so the benefit to its revenue line will be zero. "We're not charging for the services we're providing," said Ron Steele,

³ See *e.g.*, Declaration of M/C Venture Partners in Support of CompTel's Emergency Motion for Standstill Order, CC Docket Nos. 01-338, 96-98, and 98-147, (filed June 24, 2004); Letter from Peter H.O. Claudy, M/C Venture Partners, James Flemming, Columbia Capital, James N. Perry, Jr., Madison Dearborn Partners, LLC, Rand G. Lewis, Centennial Ventures and James H. Greene, Jr., Kohlberg Kravis Roberts & Co., to Michael K. Powell, Chairman of the FCC, CC Docket Nos. 01-338, 96-98, and 98-147 (July 22, 2004); Letter from William Laverack, Jr., Whitney & Co., LLC, Michael Huber, Quadrangle Group, LLC, Anthony J. Bolland, Boston Ventures, to Michael K. Powell, Chairman of the FCC, filed in CC Docket Nos., 01-338, 96-98, 98-147 (July 28, 2004). Letter from G. Jackson Tankersly, Jr., Meritage Private Equity Funds to Michael K. Powell, Chairman of the FCC, filed in CC Docket Nos. 01-338, 96-98, 98-147 (August 5, 2004); and Letter from James Wade, M/C Venture Partners, Michael Huber, Quadrangle Group LLC, James N. Perry, Jr., Madison Dearborn Partners LLC, Rand G. Lewis, Centennial Ventures, James H. Greene, Jr., Kohlberg Dravis Roberts & Co., William Laverack, Whitney & Co. LLC, G. Jackson Tankersly, Jr., Meritage Private Equity Funds, and James Fleming and John Siegel of Columbia Capital to the Honorable Michael K. Powell, Chairman of the FCC, filed in WC Docket No. 04-313 and CC Docket No. 01-338 (October 7, 2004).

⁴ Remarks of Chairman Michael K. Powell, Goldman Sachs Communicopia XI Conference, New York, NY (October 2, 2002).

⁵ *Id.*

NEON's vice president of finance and chief technology officer. But "I would expect somebody along the way will remember we were there to help out." ⁶

It is significant that, while NEON is indeed a fiber-based carrier, with much of its own local and long-haul fiber, NEON still must rely on the availability of last mile dark fiber loops and transport to be able to provide service to the maximum number of customers, many of them small businesses. New providers, like NEON Communications, are a true success story; yet none of these carriers can afford to lose access to critical bottleneck transmission facilities like loops and transport. Hopefully, as this proceeding concludes, the FCC will not forget that many competitive carriers, like NEON, who "were there to help out" were built in reliance on a consistent regulatory policy favoring access to ratepayer-funded Bell networks.

It is clear that the private equity investors, and the start-ups they've funded, are SBE Council constituent groups that will be most directly, and dramatically, affected by the policies the Commission will either support, or retreat from, in this proceeding. Nonetheless, the largest impact on our nation's small businesses may be on those businesses who, as consumers, have been the biggest beneficiaries of the FCC's traditional pro-competitive policies. According to a recent survey for the Small Business Administration's Office of Advocacy, small businesses pay disproportionately more for telecommunications services than larger businesses.⁷ Accordingly, small business users have embraced competitive alternatives, and CLECs have captured 22% of the nationwide small business market, and almost 30% of this market in metropolitan areas.⁸ The SBA survey data show that, on a per line basis, the very smallest, small business customers purchasing local and long-distance service from a competitor pay about 15% less than those customers using ILEC service.⁹ The survey also shows that for those small businesses purchasing DS1 service, the cost savings from using a competitor expand dramatically—to over 50%!¹⁰ Regardless of the precise numbers, it is clear that small business consumers benefit substantially from competitive alternatives.

Thus, the SBE Council urges the FCC to take seriously an admonition contained within the SBA survey, "public policies that increase business expenditures are likely to

⁶ Available online at http://telephonyonline.com/ar/telecom_early_hopes_quickly_2/index.htm

⁷ "A Survey of Small Businesses' Telecommunications Use and Spending" by Stephen B. Pociask, TeleNomic Research, LLC (rel. March 4, 2004) at 2-3, 71. ["SBA Survey"] Available online at <http://www.sbaonline.sba.gov/advo/research/rs236tot.pdf>

⁸ *Id.* at ii, 66-67.

⁹ *Id.* Numbers calculated from SBA survey data on pp. 23-24.

¹⁰ *Id.* Data from Tables 41 and 42. Others have posited similar, though less dramatic, small business benefits from competition. See "The Economic Impact of the Elimination of DS-1 Loops and Transport as Unbundled Network Elements." Michael D. Pelcovits and Mark T. Bryant (rel. June 29, 2004) at 10. (This study analyzed the consumer impact of a substantial price increase in a key input to providers of service to small business consumers, and concluded the effect would be a 25% retail price increase to small business consumers.) Available at http://www.comptelascient.org/public-policy/federal-regulatory/documents/2004/une_study_june29_2004.pdf

adversely affect smaller businesses more than other businesses.”¹¹ The Commission will serve the nation’s policies favoring small business development best by preserving access to dark fiber and high-capacity loops and transport, and providing a clear migration path for carriers using UNE-P to serve small business consumers. In acting consistently with prior policy guidance, the Commission will create an environment for consistent small business expansion.

Thank you for your consideration of the SBE Council’s views in this matter. Please do not hesitate to contact our office if we can answer questions, or provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Kerrigan". The signature is fluid and cursive, with the first name "Karen" and last name "Kerrigan" clearly distinguishable.

Karen Kerrigan
President & CEO

¹¹ SBA Survey at ii.